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E-Filed: June 14, 2010

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:) CASE NO.: 09-26633-BAM
Anthony V. Mosley,) (Chapter 11)
Debtor.)
) Hearing Date: July 27, 2010
) Hearing Time: 9:00 a.m.
)

**MOTION TO CLARIFY CONFIRMATION ORDER AND MODIFY THE
DEBTOR'S PAYMENTS TO UNSECURED CREDITORS HOLDING
ALLOWED CLAIMS UNDER HIS CHAPTER 11 PLAN OF REORGANIZATION**

Anthony V. Mosley, the debtor in the above-captioned proceeding (the “**Debtor**”), by and through his undersigned attorneys, The Schwartz Law Firm, Inc., files his Motion to Clarify the Confirmation Order and Modify the Debtor’s Payments to Unsecured Creditors Holding Allowed Claims Under His Chapter 11 Plan of Reorganization (the “**Motion**”), pursuant to Federal Rule of Civil Procedure 60(b)(1), made applicable here by Federal Rule of Bankruptcy Procedure 9024 and 11 U.S.C. 1127, and in support of the Motion, the Debtor submits the following:

FACTUAL BACKGROUND

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2. On March 16, 2010, the Bankruptcy Court held a confirmation hearing (the
3 “**Confirmation Hearing**”) and confirmed the Debtor’s Second Amended Chapter 11 Plan of
4 Reorganization (the “**Plan**”). The Court entered the order confirming the Plan (the
5 “**Confirmation Order**”) on April 23, 2010.
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8. At the Confirmation Hearing, the Debtor’s counsel inadvertently indicated that
9 the Debtor would be surrendering his property located at 4301 Cory Place, North Las Vegas,
10 Nevada (the “**Cory Place Property**”). The Debtor, however, as indicated in the Confirmation
11 Order, will surrender the property located at 2009 Englestad Street, North Las Vegas, Nevada
12 (the “**Englestad Property**”), not the Cory Place Property.
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15. Importantly, the Plan contemplated paying the secured creditor for the Cory Place
16 Property (“**U.S. Bank**”) in full, in accordance with the U.S. Bank’s election under section
17 1111(b) of the Bankruptcy Code. This provision in the Plan was never objected to by any party.
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20. In addition, in the Debtor’s Plan, attached to the Confirmation Order as Exhibit A,
21 the Debtor’s counsel inadvertently listed the Debtor’s payment plan to unsecured creditors
22 holding allowed claims of \$1,500.00 per month, whereas, the Debtor indicated in his Second
23 Amended Disclosure Statement (the “**Disclosure Statement**”) that his payment plan to
24 unsecured creditors holding allowed claims would be \$4,000.00 per month.
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27. Since the Confirmation Hearing, however, the Debtor experienced and continues
28 to experience significant vacancies at his properties, which are mainly occupied by indigent
29 tenants on a daily or weekly basis. In fact, the Debtor’s rental income is about 33% less than it
30 was during the disclosure statement/plan confirmation process. Accordingly, pursuant to Section
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1127 of the Bankruptcy Code, the Debtor requests the Plan be modified to reduce his plan
1 payments to unsecured creditors holding allowed claims to \$3,000.00 per month.
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4 6. Therefore, by this Motion, the Debtor hereby requests to (i) clear the record of the
5 Confirmation Hearing, whereby the Debtor's counsel inadvertently indicated that the Debtor
6 intended to surrender the Cory Place Property, not the Englestad Property, and (ii) modify the
7 Confirmation Order to change the Debtor's Chapter 11 Plan payment obligation to unsecured
8 creditors holding allowed claims to \$3,000.00 per month.
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ARGUMENT

12 7. Federal Rule of Civil Procedure 60(b)(1), in accordance with Bankruptcy Rule
13 9024, provides:

15 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding.
16 On motion and just terms, the court may relieve a party or its legal
17 representative from a final judgment, order, or proceeding for the
18 following reasons:
19
(1) mistake, inadvertence, surprise, or excusable neglect.

20 8. The courts have long noted that a Rule 60(b) motion is to be construed liberally to
21 do substantial justice. Laguna Royalty Co. v. Marsh 305 F.2d 817 (C.A. Tex. 1965). In addition
22 to Rule 60(b), Rule 60(b)(1), which grants relief based upon mistake, inadvertence, surprise, or
23 excusable neglect, must also be given liberal construction. Diversified Utilities Sales, Inc. v.
24 Monte Fusco Excavating Contracting Co., Inc. 71 F.R.D. 661 (E.D.Pa. 1976).

25 9. Accordingly, the Debtor respectfully requests that the Court clarify the record of
26 the Confirmation Hearing to indicate that the Debtor would surrender the Englestad Property, not
27 the Cory Place Property. Moreover, U.S. Bank made an 1111(b) election with respect to its
28 claim on the Cory Place Property. Pursuant to such election, it is conclusively deemed to have
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1 accepted the Debtor's Plan. Therefore, the inadvertent mistake of the Debtor's counsel had no
2 effect on any vote to accept or reject the Plan, or the secured claim of U.S. Bank.
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4 10. Finally, 11 U.S.C. 1127(e) provides the following:

5 If the debtor is an individual, the plan may be modified at any time after
6 confirmation of the plan but before completion of payments under the plan,
7 whether or not the plan has been substantially consummated, upon request of the
8 debtor, the trustee, the United States trustee, or the holder of an allowed
unsecured claim, to-

9 (1) increase or reduce the amount of payments on claims of a particular class
10 provided for by the plan;
11 (2) extend or reduce the time period for such payments; or
12 (3) alter the amount of the distribution to a creditor whose claim is provided for
13 by the plan to the extent necessary to take account of any payment of such
claim made other than under the plan.

14 11. Here, the Court entered the Confirmation Order on April 23, 2010, and the Debtor
15 began making payments to the Disbursement Agent in May 2010. Accordingly, the Debtor has
16 only made 2 of the required 60 payments under the Plan to unsecured creditors holding allowed
17 claims. Thus, the plan payments are ongoing. Moreover, as the Plan provides for pro rata
18 payments on a quarterly basis, the Disbursement Agent has not yet made any pro rata payments
19 to unsecured creditors, with the first payment scheduled for July 1, 2010. As a result, the Plan
20 has not been substantially consummated.
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22 12. Furthermore, section 1127(e)(1) allows for the Plan to be modified to increase or
23 reduce the amount of payments on claims of a particular class provided for by the plan. Here,
24 the Debtor desires to reduce the monthly payments to only unsecured creditors holding allowed
25 claims under the Plan. As indicated above, the Debtor's rental income for his properties dropped
26 by nearly 33%, as several properties remain vacant. As a result, the Debtor's rental income is
27 now nearly \$6,000.00 less per month. Therefore, the Debtor proposes that his monthly payment
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1 amount to unsecured creditors holding allowed claims be modified in the Plan to \$3,000.00 per
2 month.

3 **CONCLUSION**
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5 Wherefore, the Debtor requests that this Court (i) grant his Motion (ii) and grant such
6 other relief the Court deems just and proper.
7

8 Dated this 14th day of June, 2010.

9 Respectfully Submitted,
10

11 /s/Samuel A. Schwartz, Esq.

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CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing was sent via the Court's CM/ECF System on June 14, 2010 to the following:

MICHAEL R. BROOKS on behalf of Creditor WASHINGTON FEDERAL SAVINGS
jsallade@brooksbauder.com

MICHAEL W. CHEN on behalf of Creditor U.S. Bank National Association, as Trustee for BNC Mortgage Loan Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 c/o Chase Home Finance, LLC
yvette@ccfirm.com

JACQUELINE A. GRUBER on behalf of Creditor DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATEHOLDERS FOR ARGENT SECURITIES TRUST 2005-W4, ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2005-W4
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EDWARD M. MCDONALD on behalf of U.S. Trustee U.S. TRUSTEE - LV - 11
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RONALD H REYNOLDS on behalf of Creditor SN Servicing Corporation, its assignees and/or successors in interest
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CINDY LEE STOCK on behalf of Creditor EMC MORTGAGE COMPANY
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U.S. TRUSTEE - LV - 11
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GREGORY L. WILDE on behalf of Creditor BANK OF AMERICA
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LES ALLEN ZIEVE on behalf of Creditor Ocwen Loan Servicing, LLC
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1 ACE C VAN PATTEN on behalf of Creditor DEUTSCHE BANK NATIONAL TRUST
2 COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE
3 CERTIFICATEHOLDERS FOR ARGENT SECURITIES TRUST 2005-W4, ASSET-BACKED
4 PASS-THROUGH CERTIFICATES SERIES 2005-W4
5 avanpatten@piteduncan.com, avanpatten@piteduncan.com

6 I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S.

7 Mail on June 14, 2010 to the following:

8 Anthony Mosley
9 1845 Fairhaven Street
10 Las Vegas, Nevada 89108

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11 Dept of Employment, Training and Rehab
12 Employment Security Division
13 500 East Third Street
14 Carson City, NV 89713

Amex
Po Box 297871
Fort Lauderdale, FL 33329

15 IRS
16 P.O. Box 21126
17 DPN 781
18 Philadelphia, PA 19114

Bank Of America
475 Crosspoint Pkwy
Getzville, NY 14068

19 Nevada Dept of Taxation, BK Section
20 555 E. Washington Ave. #1300
21 Las Vegas, NV 89101

Cap One
Attn: C/O TSYS Debt Management
Po Box 5155
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22 Acct Corp
23 4955 South Durango
24 Las Vegas, NV 89113

Capital 1 Bank
Attn: C/O TSYS Debt Management
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25 Allstate Adj
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27 Las Vegas, NV 89119

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121 Woodcrest Rd
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28 Amc Mortgage Services
29 Attn: Bankruptcy Dept.
30 Po Box 11000
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Chase Manhattan Mortgage
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1 Citifinancial
 2 Po Box 499
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4 Citifinancial Retail Services
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6 Clark County Treasurer
 7 500 S Grand Central Parkway
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 9 Las Vegas, NV 89155-1220

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10 Countrywide Home Lending
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13 Desert Radiologists
 14 P.O. Box 3057
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16 Emc Mortgage
 17 Attention: Bankruptcy Clerk
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 19 Lewisville, TX 75029

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 22 Las Vegas, NV 89125-1569

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 29 Roswell, GA 30076

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30 Hsbc Bank
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3 Las Vegas, NV 89114-5645

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4 Texaco / Citibank
5 Attn.: Centralized Bankruptcy
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11 Torrance, CA 90501

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12 Washington Federal Savings
13 300 S. Ellsworth
14 Albany, OR 97321

15 PROBER & RAPHAEL, A LAW CORPO-
16 RATION
17 20750 Ventura Boulevard, Suite 100
18 Woodland Hills, California 91364

19 Wells Fargo Home Mtg
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21 3476 Stateview Blvd.
22 Fort Mill, SC 29715

23 /s/Magda Cardona
24 Magda Cardona

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